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CASE NO. 83-490
IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

RALPH DAVIS, individually, CHESTER BLAKEMORE, officially as the Director of the Department of Highway Safety and Motor Vehicles; and J. ELDREDGE BEACH, individually and as Director of the Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, Appellants,

v.

GREGORY SCOTT SCHERER, Appellee.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

JOINT APPENDIX

JIM SMITH
Attorney General

MITCHELL D. FRANKS
Chief Trial Counsel

VICKI GORDON KAUFMAN
BRUCE A. MINNICK
Assistant Attorneys General

Dept. of Legal Affairs
The Capitol, Suite 1501
Tallahassee, Florida 32301
(904)488-9935
Counsel for Appellants

BEN R. PATTERSON
Patterson & Traynham
1215 Thomasville Road
Post Office Box 4289
Tallahassee, FL 32303
(904)224-9181

Counsel for Appellee

Appeal Docketed September 21, 1983
Probable Jurisdiction Noted
December 12, 1983

JOINT APPENDIX

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OMITTED JUDGMENTS AND ORDERS

The following opinions, decisions, judgments, and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Jurisdictional Statement.

Memorandum Opinion and Order of the District Court for the Northern District of Florida, Tallahassee Division, July 15, 1981 . . . . . 1a

Judgment of the District Court for the Northern District of Florida, Tallahassee Division, July 17, 1981 . . . . . 56a

Order Amending Judgment of the District Court for the Northern District of Florida, Tallahassee Division, June 7, 1982 . . . . . 62a

Amended Judgment of the District Court for the Northern District of Florida, Tallahassee Division, June 14, 1982 . . . . . 79a

Order of the Court of Appeals for the Eleventh Circuit, June 30, 1983 . . . . . 83a

Order of the Court of Appeals for the Eleventh Circuit denying Petition for Rehearing, August 22, 1983 . . . . . 85a

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

GREGORY SCOTT SCHERER

v.

RALPH DAVIS, etc., et al.,

No. TCA 79-0885

1.	Complaint.	June 1, 1979
2.	Defendants' Motion to Dismiss.	Aug. 6, 1979
3.	Answer.	Sept. 19, 1979
4.	Defendants' Motion to Sever Claims.	Dec. 26, 1979
5.	ORDER: Defendants' Motion to Sever Plaintiffs' Claims GRANTED. Action dismissed as to claims of Plaintiffs Gray, Warren, Forrester and Walsh. Action dismissed as to Defendants Graham, Firestone, Smith, Lewis, Turlington, Doyle, Gunter, Wainwright, Roesch, Bran, Madden, Page, U. Davis, Pingree, King and Robertson. Plaintiff Scherer given 10 days	

	from date of Order to amend complaint.	April 14, 1980
6.	Amended Complaint.	Sept. 11, 1980
7.	Answer.	Sept. 25, 1980
8.	Non-Jury Trial.	April 6-7, 1981
9.	Memorandum Opinion and Order.	July 16, 1981
10.	Judgment.	July 17, 1981
11.	Plaintiff's Motion for Attorney Fees and Costs.	July 23, 1981
12.	Defendants' Motion to Alter Judgment.	July 28, 1981
13.	Plaintiff's Response to Motion to Alter Judgment.	Aug. 11, 1981
14.	ORDER: Amending Judgment.	June 7, 1982
15.	Amended Judgment.	June 14, 1982
16.	Defendants' Notice of Appeal.	July 7, 1982
17.	ORDER: Awarding Attorneys' Fees and Costs.	Dec. 16, 1982
18.	Judgment.	Dec. 16, 1983

19.	ORDER: Amending Judgment on Attorneys' Fees.	Dec. 23, 1982
20.	Amended Judgment.	Dec. 23, 1982

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 82-5812
83-3034
(Consolidated)

1.	Appellants' Brief, Filed	Feb. 28, 1983
2.	Appellee's Brief, Filed	April 1, 1983
3.	Appellants' Reply Brief, Filed	April 20, 1983
4.	Order, Rule 25 Affirmance	June 30, 1983
5.	Appellants' Petition for Panel Rehearing, Filed	July 18, 1983
6.	Rehearing Denied	Aug. 22, 1983
7.	Notice of Appeal to the Supreme Court of the United States, Filed	Sept. 2, 1983

3. As a permanent Career Service employee of the State of Florida, Plaintiff could only be terminated from his employment for just cause, and, therefore, had property rights in his continued employment with the State of Florida protected by the Fifth and Fourteenth Amendments to the United States Constitution. Those rights are set forth in Chapter 110, Florida Statutes, §447.209, Florida Statutes, Rules 22A-7.10(7)(b), 22A-10.02, 10.03, 10.05, F.A.C., General Order #43 of the Florida Highway Patrol Manual, and §2 of the Personnel Rules and Regulations of the Department of Highway Safety and Motor Vehicles.

4. All of the Defendants, with the exception of Defendant DAVIS, are sued in their official capacities, inasmuch as the State of Florida, its officers, officials, agencies, agency heads, and employers are

"persons" within the meaning of 42 U.S.C., §1983, and insofar as the acts complained of herein constitute the official policy, custom, or usage of the State of Florida and the Defendants herein. The relief sought against these Defendants is injunctive and declaratory relief, as well as monetary damages.

5. Certain Defendants are sued in their individual capacities as well, inasmuch as these Defendants, individually, are "persons" within the meaning of Title 42 U.S.C., §1983. The relief sought against these Defendants in their individual capacities is injunctive, declaratory, and monetary relief.

III.

Parties

6. Plaintiff SCHERER is a citizen of the United States and of the State of Florida. He was a Radio-Teletype Operator with the State of Florida Department of Highway Safety and Motor Vehicles.

7. Defendant RALPH DAVIS was, and CHESTER BLAKEMORE is, the Director of the Department of Highway Safety and Motor Vehicles, State of Florida. Defendant J. ELDREDGE BEACH is Director of the Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, State of Florida.

IV.

Causes of Action

Count I--Denial of Fourteenth Amendment Due Process

8. Paragraphs 1 through 7 of this complaint are incorporated herein and realleged as if fully set forth.

9. Plaintiff was a permanent Career Service employee of the State of Florida. The Plaintiff received a letter from Defendants DAVIS and BEACH, dated October 25, 1977, notifying him of his dismissal from employment, effective that date, and further notifying him of his appeal rights to the Career Service Commission of Florida.

10. This court is requested to take judicial notice of the laws and administrative rules of the State of Florida, as recited in paragraph 3 of this complaint.

11. Prior to termination, Plaintiff was not permitted to defend the charges against him before the ultimate decision-maker, or an impartial individual, nor was he allowed to confront and cross-examine those responsible for the allegations made against him, nor was he given sufficient

notice of the proposed adverse action, nor was he permitted to review statements of witnesses, documents, or investigative reports relied upon by the agency to support its adverse action, nor was any procedure utilized which required the terminating officials to demonstrate, show, or prove that Plaintiff committed an act warranting dismissal, nor was he permitted to be represented by a person or an attorney of his choosing.

12. The Plaintiff appealed his dismissal to the Career Service Commission, pursuant to Rule 22A-10.05 of the Career Service Commission Rules, and Florida Statutes, §110.061.

13. The Plaintiff received an opportunity for a post-termination hearing nine and one-half (9 1/2) months after dismissal.

14. Prior to the hearing, and to avoid the then and now customary waiting period for the Career Service Commission of ninety (90) days, and the frequent refusal of the agency to abide by such decision while the agency proceeds with appeal, the Plaintff agreed to settle his dispute with the agency. The settlement was further necessitated by the Plaintiff's understanding that the Career Service Commission, even if it reinstated him, was not obliged to require the agency to award back pay. The Plaintiff was further disadvantaged by a lack of litigational resources, particularly when compared with that available to the agency.

15. The settlement reached provided for an amount which was less than the Plaintitt's [sic] rate of pay prior to the discharge.

16. The agency, through the Defendants, used its resources and the treat of delay to force the Plaintiff to accept the settlement described above. In doing so, the Defendants knew that the discharge action taken by them would be reversed by the Career Service Commission.

17. The acts of all Defendants complained of herein are the implementation or execution of the official policy, custom, or usage of the State of Florida, the various agencies of the State of Florida, and the named Defendants.

18. The individual Defendants acted, as alleged in the paragraphs of this complaint, willfully and maliciously, arbitrarily and capriciously, under color of law, to deny the Plaintiff his rights to liberty and property under the Constitutions of the United States and the State of Florida, and the laws, all without

providing Fourteenth Amendment substantive and procedural due process.

19. As a result of theactions of the Defendants as set forth herein, Plaintiff has been subjected to severe financial hardship.

20. As a result of the actions of the Defendants as set forth herein, Plaintiff has been subjected to public ridicule and suffered severe emotional distress.

21. As a result of the actions of the Defendants as set forth herein, Plaintiff has been compelled to defend his rights guaranteed by the United States Constitution before this court. He has required the assistance of counsel and has incurred, and will incur, a sizeable attorney's fee.

22. As a direct result of the actions of the Defendants as set forth herein, Plaintiff has been indelibly stigmatized in

the public mind, and Plaintiff's employment potential has been permanently impaired and damaged.

23. There is an actual controversy now existing between the parties to this action. Plaintff is in doubt about his status and rights under the Constitution of the United States, and seeks that this court declare and define the rights and other legal relations of the parties.

24. As a result of the gross, willful, and malicious conduct of the individual Defendants as described herein, this action presents appropriate circumstances for a substantial award of exemplary damages against those particular individual Defendants.

Count II--Denial of First and Ninth Amendment Right of Privacy

25. Paragraphs 1 through 24 of this complaint are incorporated herein and realleged as if fully set forth.

26. On October 24, 1977, the Plaintiff was terminated from his position for his alleged violation of the Department's dual employment and compensation policy because he allegedly failed to receive written approval prior to engaging in dual employment.

27. Plaintiff challenged the agency's dual employment rule as being illegal and improperly and invalidly adopted. On June 28, 1978, a hearing officer of the State Division of Administrative Hearings declared that the rule was, indeed, improperly promulgated and, therefore, had no legal effect whatsoever.

28. The dual employment in which Plaintiff originally engaged in now [sic] way interfered with this employment with the State of Florida. The termination of Plaintiff for his choice to work a second job in the evenings violated his rights to

privacy, his fundamental right to work and earn a living and to acquire and possess property from the fruits of his labor, as is guaranteed by the United States Constitution. These rights can only be regulated by narrowly tailored police regulations that serve an important governmental interest. Plaintiff was arbitrarily denied that right and suffered still further emotional distress and other damagesas a result thereof.

29. The individual Defendants herein continue to harass Plaintiff in his employment, or in the case of supervisors, refused to investigate or otherwise discipline the persons responsible for the harassment. Harassment came in many forms, such as changing shift assignments, last minute changes in vacation time, and other subtle harassment techniques. These harassment techniques continued to deprive

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished, by pre-paid United States Mail, to Pamela L. Lutton, Esq., Assistant Attorney General, Department of Legal Affairs, Suite 1501, The Capitol, Tallahassee, Florida 32301, this 10th day of September, 1980.

/s/
Ben R. Patterson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA,
TALLAHASSEE DIVISION

Case No. TCA 79-0885

GREGORY SCOTT SCHERER,
Plaintiff,

vs.

RALPH DAVIS, et al.,

Defendants.

ANSWER

Defendants, by and through their undersigned counsel answer the Amended Complaint in the cause as follows:

FIRST DEFENSE

This court lacks subject matter jurisdiction over the claims for damages against Defendants in their official capacities.

SECOND DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

1. Defendants admit the allegations contained in the third sentence of paragraph 1, the first sentence of paragraph 2, the first sentence of paragraph 3, the first sentence of paragraph 5, paragraph 6, paragraph 7, paragraph 9, paragraph 12, paragraph 13, paragraph 26, and the first sentence of paragraph 27.

2. Defendants admit the allegations contained in paragraph 14, that prior to the Career Service Commission hearing the Plaintiff settled his dispute with the agency. Defendants are without sufficient knowledge as to the remaining allegations of that paragraph and therefore deny them.

3. Defendants admit the allegations contained in the second sentence of paragraph 27 except the conclusion as to the "legal effect" is denied.

4. Defendants deny the allegations contained in the third sentence of paragraph 1, paragraph 2, paragraphs 15-24 and 28-31.

FOURTH DEFENSE

Defendants affirmatively aver that Plaintiff requested and/or acquiesced in the delay of his Career Service Commission hearing, thereby waiving any right to hearing at an earlier date.

FIFTH DEFENSE

Defendants affirmatively aver that all actions taken by them in regard to the Plaintiff were in good faith and pursuant to the laws of Florida and the rules and regulations of the Highway Patrol and

Department of Highway Safety and Motor Vehicles.

WHEREFORE, having fully answered the Amended Complaint, Defendants deny any liability to Plaintiff as a result thereof and pray that this action be dismissed.

Respectfully submitted,

JIM SMITH
Attorney General

/s/
PAMELA L. LUTTON
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS
Suite 1501
The Capitol
Tallahassee, FL 32301
904 488-1573

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer has been furnished Ben R. Patterson, Esq., Attorney at Law, 1215 Thomasville Road, Tallahassee, FL 32303, by Mail, this 23rd day of September, 1980.

/s/
Pamela L. Lutton
Assistant Attorney General

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO. 79-0885

GREGORY SCOTT SCHERER,
et al.,
Plaintiffs,

vs.

ROBERT GRAHAM,
et al.,

Defendants.

PRE-TRIAL STIPULATION

COMES NOW the attorneys for the Plaintiff, Gregory Scott Scherer, and the attorneys for the Defendants, Ralph Davis, Chester Blakemore, in his official capacity as Director of the Florida Department of Highway Safety and Motor Vehicles, and Eldredge Beach, individually and as Director of the Florida Highway Patrol, Department of Highway Safety and Motor

Vehicles, the parties to this cause, pursuant to the Local Rules of this court, and stipulate as follows:

I.

Jurisdiction of this action is conferred upon the court by 28 U.S.C., §§1331 and 1343 (1970), and for actions brought under the Civil Rights Act of 1871, 42 U.S.C., §1983, hereinafter referred to as the Act.

II.

The Plaintiff, Gregory Scott Scherer, hereinafter referred to as the Plaintiff, is a former employee of the State of Florida Department of Highway Safety and Motor Vehicles. The Defendants are Ralph Davis, Chester Blakemore, and Eldredge Beach.

The nature of the action involves the entitlement of the Plaintiff to the

procedural protections of the Fifth, Ninth, and Fourteenth Amendments to the United States Constitution, insofar as it relates to his employment and whether that employment may have been impermissibly terminated as the result of his inherent right as a citizen to utilize his off-duty time in whatsoever way he desired, so long as the utilization of time did not conflict with his employment.

III.

A. Plaintiff makes the following contentions: (See Exhibit "A", attached hereto.)

B. Defendants make the following contentions: (See Exhibit "B", attached hereto.)

IV.

Plaintiff's list of trial exhibits is attached hereto as Exhibit "C". The Defendants' list of trial exhibits is attached hereto as Exhibit "D".

V.

Plaintiff's list of trial witnesses is attached hereto as Exhibit "E". Defendants' list of trial witnesses is attached hereto as Exhibit "F".

VI.

1. The Plaintiff was employed by the Florida Department of Highway Safety and Motor Vehicles, Division of Florida Highway Patrol, as a Radio-teletype Operator, on January 13, 1975.

2. His gross pay as of October 25, 1977, on a monthly basis, was seven hundred fifty-three dollars and thirty-three cents ($753.33).

3. During the months of September and October, 1977, the Executive Director of the Department of Highway Safety and Motor Vehicles was Ralph Davis.

4. Mr. Davis continued as Executive Director of the agency until _____ when he was succeeded by Mr. Chester Blakemore.

5. During the months of September and October, 1977, and continuing to the present, the Director of the Florida Highway Patrol (FHP) was and is Eldredge Beach.

6. The policy of the Department of Highway Safety and Motor Vehicles required Messers Beach and Davis to approve each and every suspension or dismissal of the employees of the FHP, including the dismissal of Mr. Scherer.

7. Mr. Beach and Mr. Davis approved the dismissal of the Plaintiff from his employment, effective October 25, 1977.

probationary period of employment, filed an appeal against dismissal with the Florida Career Service Commission on November 10, 1977.

20. On November 18, 1977, the Plaintiff was notified by Dorothy B. Roberts, Appeals Coordinator, that his appeal had been received and that the Department of Highway Safety and Motor Vehicles had been requested to provide certain information relative to his employment status to enable the Career Service Commissoin to determine the Plaintiff's appeal rights.

21. By letter dated December 8, 1977, signed by Miles T. Dean, from Conley M. Kennison, State Personnel Director, Mr. Scherer was notified that his appeal was in order and would be heard by the Career Service Commission.

22. On or about April 19, 1978, and pursuant to the Administrative Procedures

Act, the Plaintiff filed a petition for a rule challenge to Policy Number 009 of the Department.

23. On June 28, 1978, the challanged Policy Number 009 on the subject of dual employment and compensation was declared invalid because it had not been promulgated as a rule required by Florida Statute.

24. By letter dated July 13, 1978, signed by Dorothy B. Roberts, Appeals Coordinator for the Career Service Commission, the Plaintiff was notified that his appeal against dismissal would be herd by the Career Service Commission on August 4, 1978.

25. The Department of Highway Safety and Motor Vehicles did not appeal the invalidation of Policy Number 009 to the District Court of Appeal, and the determination that the Policy Number 009 was an invalid rule, as applied to Mr. Scherer, is final.

26. On July 24, 1978, the Department of Highway Safety and Motor Vehicles gave notice to the Plaintiff of additional reasons for the Plaintiff's dismissal of October 25, 1977.

27. On August 10, 1978, the Career Service Commission entered its order approving a stipulation and agreement between the Department of Highway Safety and Motor Vehicles and the Plaintiff, by which Plaintiff's dismissal was withdrawn, Plaintiff was credited with his sick and annual leave as if no dismissal had occurred, Plaintiff was awarded three thousand four hundred fifty dollars ($3,450) for back wages and was reinstated to his position of employment effective August 4, 1978.

28. Had Mr. Scherer continued in his employment with the Department of Highway Safety and Motor Vehicles from October 25,

1977, to August 4, 1978, he would have earned six thousand eight hundred sisteen dollars and fifty-one cents ($6,816.51).

29. By memorandum dated January 11, 1979, Plaintiff informed Defendant Beach that he wished to resign his position with the Highway Patrol effective January 13, 1979.

30. By memorandum dated January 12, 1979, Defendant Beach advised Plaintiff Scherer that he was relieved of duty January 10, 1979, pending an investigation; however, in view of Plaintiff's letter of January 11, 1979, Plaintiff's resignation was accepted effective January 13, 1979.

31. The Plaintiff's last day on the payroll of the Department of Highway Safety and Motor Vehicles was January 13, 1979. Plaintiff received all accrued leave.

32. As of January 13, 1979, the Plaintiff was making seven hundred seventy-

two dollars ($772) monthly. Plaintiff received all accrued leave.

33. Plaintiff did not administratively appeal the termination of his employment effective January 13, 1979.

34. Whether Plaintiff voluntarily ended his employment with the Florida Highway Patrol. [sic]

VII.

The following issues of law have been agreed upon by the parties:

1. The Plaintiff had permanent status within the Career Service System of the State of Florida under Chapter 110 of the Florida Statutes, and within the rules of the Career Service System of the State of Florida.

2. The Plaintiff had a property interest in his employment which was shielded by Fourteenth Amendment due process.

VIII.

Issues of fact which remain to be litigated are:

1. Whether the Plaintiff was employed following receipt of the letter of dismissal and, if so, the amounts earned.

2. Whether the Defendants acted reasonably and in good faith or maliciously, recklessly, with ill will or improper purpose.

3. Whether Captain Sconiers spoke to Plaintiff concerning Plaintiff's part-time employment and hours and informed Plaintiff that he did not think the Department would approve Plaintiff's request to work part-time with the Escambia County Sheriff's Office.

4. The dates and substance of conversations between Sgt. Clark and the Plaintiff concerning Plaintiff's working as a reserve deputy.

5. The dates and hours Plaintiff worked for the Escambia County Sheriff's Office during September and October, 1977.

6. Whether Defendant Beach recommended Plaintiff's firing without becoming informed of the facts surrounding his outside employment and attempts to comply with Departmental policy.

7. Whether the recommendation of Defendant Beach to fire Plaintiff was reasonable under the circumstances.

8. Whether Defendant Davis approved the dismissal of the Plaintiff without being informed of the facts of Plaintiff's outside employment or taking reasonable steps to become so informed.

9. Whether Defendant Beach acted reasonably in regard to all matters involving the Plaintiff after Plaintiff's reinstatement.

10. What occurred after Plaintiff's reinstatement on August 4, 1978.

11. What procedures were provided to the Plaintiff prior to termination, after termination, and after reinstatement.

12. What facts, if any, were in Defendants possession prior to Plaintiff's termination upon which the decision to terminate Plaintiff were based.

13. Whether Plaintiff requested and/or acquiesced in the delay in setting his hearing before the Career Service Commission.

14. Damages.

IX.

Issues of law which remain to be litigated are:

1. Whether the procedures afforded Plaintiff prior to termination, after termination, and after reinstatement were

sufficient to satisfy the requirements of the Fourteenth Amendment.

2. Whether the termination of Plaintiff's employment on January 10, 1979, was a constructive discharge.

3. Whether the Defendants' dismissal of the Plaintiff under the circumstances of this case invaded the Plaintiff's right to liberty and/or to privacy.

4. Whether the Defendants are entitled to a qualified good faith immunity defense; whether the Defendants are entitled to that defense under the objective prong of Wood; and whether the Defendants are entitled to that defense under the subjective prong.

5. Whether the Defendants' actions under the circumstances of this case may be legally characterized as reasonable or subjectively taken in good faith.

6. Plaintiff's entitlement to injunctive relief.

7. Plaintiff's entitlement to declaratory relief.

8. Plaintiff's entitlement to damages, including actual and exemplary damages.

9. Whether the back pay component of any award of damages should be mitigated or in any fashion diminished by interim earnings of Plaintiff.

10. Whether, under the facts known to the Defendants prior to Plaintiff's termination, Defendants arguably had the authority to adversely determine Plaintiff's employment status.

11. Whether Defendants Beach and/or Davis had any duty to become more informed of the facts of Plaintiff's outside employment prior to dismissing him.

12. Which party has the burden of proof concerning Defendants' good faith.

13. Whether Plaintiff waived his right to a prompt evidentiary hearing regarding his dismissal.

14. What effect the settlement entered in Plaintiff's case before the Career Service Commission has on this case.

15. Whether Plaintiff should have Pursued an administrative appeal of the January 13, 1979 termination of his employment and, if so, what effect his failure to do so has on this case.

X.

There is no disagreement between the parties as to the application of rules or evidence to the Federal Rules of Civil Procedure.

XI.

This is scheduled as a non-jury trial. Counsel estimate that trial of this matter will take two days.

Respectfully submitted,

JIM SMITH
Attorney General

reinstatement comported with the requirements of procedural process and did not violate Plaintiff's privacy or any other constitutional right.

Plaintiff could have contested the termination of his employment in January, 1979 by appealing to the Florida Career Service Commission. Plaintiff's failure to avail himself of that adequate administrative remedy prohibits him from litigating that question in this Court.

Defendants further contend that their actions as regard to Plaintiff were without malice and not contrary to a clearly established constitutional right of the Plaintiff. For Plaintiff to prevail, Plaintiff would have the burden of showing bad faith on Defendants' part.

EXHIBIT "B"

EXHIBIT "C"

Plaintiff's List of Documents for Trial

1. Policy No. 009 on the subject of dual employment and compensation, with an effective date of September 9, 1975, and signed by Ralph Davis.

2. General Order No. 43 of the Florida Highway Patrol, dated September 1, 1977, on the sugject of personnel rules and regulations--disciplinary action, appeals, grievances, and lost or stolen department-owned property policy.

3. Department of Highway Safety and Motor Vehicles, Personnel Rules and Regulations, §2, subject of disciplinary actions, grievances, and appeals, as approved by Conely M. Kennison, State Personnel Director, on or about July 19, 1977.

4. Correspondence dated August 21, 1975, from Conley M. Kenninson to Mr. Ralph Davis, with attachment.

5. Memorandum dated August 26, 1977, from G.S. Scherer to K.D. Sconiers.

6. Memorandum dated September 1, 1977, from K.D. Sconiers to G.S. Scherer.

7. Memorandum dated September 23, 1977, from K.D. Sconiers to G.S. Scherer.

8. Memorandum dated October 18 1977, from C.C. Wiggins to G.S. Scherer.

9. Teletype message, 0083 1024 1506 PANAl.

10. Letter dated October 24, 1977, from J.E. Beach, approved by Ralph Davis, to G.S. Scherer.

11. Letter dated November 10, 1977, from Ben Patterson to Conley Kennison.

12 Letter from Dorothy B. Roberts to Ben Patterson, dated November 18, 1977.

13. The personnel record of G.S. Scherer, as maintained by the Department of Highway Safety and Motor Vehicles, including the check-out sheet.

14. Letter dated October 18, 1977, from K.D. Sconiers to Colonel J.E. Beach.

15. Memorandum dated October 18, 1977, from C.C. Wiggins to K.D. Sconiers.

16. Memorandum dated August 18, 1977, from G.S. Scherer to K.D. Sconiers.

17. Memorandum dated October 12, 1977, from K.D. Sconiers to J.E. Beach.

18. Memorandum dated October 7, 1977, from W.A. Clark to K.D. Sconiers.

19. Memorandum dated October 4, 1977, from C.C. Wiggins to K.D. Sconiers.

20. Memorandum dated October 3, 1977, from W.A. Clark to K.D. Sconiers.

21. Letter dated July 13, 1978, from Dorothy B. Roberts to Ben R. Patterson and Edwin Strickland.

22. Letter dated August 10, 1978, from Dorothy B. Roberts to Enoch J. Whitney and Jerry G. Traynham.

23. All pleadings in a certain petition for a rule determination proceeding stuled [sic] Gregory Scott Scherer v. Department of Highway Safety and Motor Vehicles, Division of Florida Highway Patrol, Division of Administrative Hearings Case No. 78-750R.

24. All pleadings and documents contained in a Career Service Commission case styled In the Appeal of Gregory Scott Scherer Against Dismissal by the Department of Highway Safety and Motor Vehicles, Docket No. 77-292.

25. All pleadings and documents filed in the United States District Court, Northern District of Florida, Pensacola Division in Bankruptcy Case NO. 79-04151.

26. Memorandum dated November 24, 1975, from Jim Cox to the Divison of Directors on the subject of review of employee dismissal or suspension, to which is attached a form for review by Legal and Personnel of each suspension or termination.

27. Management guidelines for disciplinary actions submitted to Morris Helms from Jim Cox, with attachments dated October 14, 1977.

28. Personnel officers memorandum no. 77-225 on the subject of the right of management to assign duties and responsibilities to employees, sent to Morris Helms by Art Adams, and received on October 26, 1977, by the Department of Highway Safety and Motor Vehicles.

29. The pre-termination file of the Divison of Personnel of the Department of Highway Safety and Motor Vehicles, and all documents contained therein.

30. Minutes of the Division of Directors' meeting of January 5, 1975, reflecting receipt by the personnel section of the Department of Highway Safety and Motor Vehicles of January 17, 1975.

31. Minutes of the Division of Directors' meeting of July 28, 1975, concerning proposed revision of Department of Highway Safety and Motor Vehicles Policy No. 009 on the subject of dual employment.

32. Minutes of the Divison of Directors' meeting of August 11, 1975, approving Policy No. 009 on the subject of dual employment.

33. Minutes of the meeting of the Governor and the Cabinet approving Policy No. 009.

34. Minutes of meeting of November 24, 1975, approving the form to accompany drafts of orders or suspensions of [sic] dismissals.

35. Minutes of the meetings of December 27, 1976, which concerned dismissal and suspensions of over twenty-four (24) hours.

36. Minutes of the meeting of April 11, 1977, concerning guidelines for disciplinary actions.

37. Memorandum dated June 30, 1978, from John Whitney to Colonel Roger Coller, on the subject of Scherer v. DHSMV, DOAH Case No. 78-750R, which reflects carbon copies being sent to Defendants Davis and Beach.

38. Letter dated August 21, 1975, from Conley M. Kennison to Ralph Davis approving the policy of dual employment.

39. Department of Highway Safety and Motor Vehicles Division Directors' meeting minutes for March 5, 1973, subject of outside employment--conflict of interest.

40. Letter of December 7, 1976, from Ralph Davis to Mr. Edwin Frasier.

41. Letter of December 7, 1976, from Ralph Davis to Mr. J.P. Hall.

42. Memorandum dated September 21, 1977, to Directors Executive Staff and Maurice Helm, from Ralph Davis,

on the subject of "new members Career Service Commission".

43. Memorandum dated May 8, 1978, to Directors, Executive Staff, Mr. Helms, from Ralph Davis, telling all that Joseph Crevasse was appointed to the Career Service Commission.

44. Personnel file out card, indicating that it was not taken out until November 28, 1977, then by Maurice Helms.

45. Letter dated August 17, 1978, to Mr. E. Edward Cellon, from Maurice Helms, indicating that the Career Service Commission reinstated Scherer with $3,450.00 in back wages, and that had he continued to work or have been paid all back wages, it would come to $6,816.51.

46. Report of personnel action form, dated January 15, 1979, for Gregory S. Scherer.

47. Correspondence from Mr. Beach, dated January 12, 1979, to Gregory S. Scherer, reflecting a carbon copy to Captain Sconiers.

48. Teletype message from Beach to Scherer advising him that he was being relieved of duty, pending completion of investigation on destruction of radio equipment.

49. Memorandum to F.H.P. staff from J.E. Beach, dated November 18,

1975, on the subject of suspensions and informing staff to forward all suspensions to Legal and Personnel before submitting them to J.E. Beach.

50. Correspondence from J.E. Beach to First Sargeant W.R. Fox, on the subject of permission for civil action where Fox was given permission to retain an attorney to investigate a civil action, dated March 4, 1975.

DEFENDANTS' LIST OF DOCUMENTS

1. Memorandum dated September 1, 1977
   From: K.D. Sconiers
   To: G.S. Scherer
   Re: Part-time employment

2. Memorandum dated September 23, 1977
   From: K.D. Sconiers
   To: G.S. Scherer
   Re: Part-time employment

3. Memorandum dated October 3, 1977
   From: W.A. Clark
   To: K.D. Sconiers
   Re: Scherer's part-time employment

4. Memorandum dated October 4, 1977
   From: C.C. Wiggins
   To: K.D. Sconiers
   Re: G.S. Scherer

5. Memorandum dated October 7, 1977
   From: W.A. Clark
   To: K.D. Sconiers
   Re: Scherer's part-time employment

6. Memorandum dated October 12, 1977
   From: K.D. Sconiers
   To: Colonel J. E. Beach
   Re: Scherer's part-time employment

7. Memorandum dated October 18, 1977
   From: C.C. Wiggins
   To: G.S. Scherer
   Re: Outside employment

8. Memorandum dated October 18, 1977
   From: G.S. Scherer
   To: K.D. Sconiers
   Re: Outside employment

9. Memorandum dated October 18, 1977
   From: C.C. Wiggins
   To: K.D. Sconiers
   Re: G.S. Scherer

10. Memorandum dated October 18, 1977
    From: K.D. Sconiers
    To: Colonel J.E. Beach
    Re: Scherer's outside employment

11. Registered letter dated October 24, 1977
    From: Colonel J.E. Beach
    To: G.S. Scherer
    Re: Termination of Employment

12. Order approving Stipulation in Career Service Commission Case No. 77-292

13. Memorandum dated January 12, 1979
    From: Colonel J.E. Beach
    To: G.S. Scherer
    Re: Resignation

14. Escambia County Sheriff's Office payroll records pertaining to Plaintiff Scherer.

EXHIBIT "D"

EXHIBIT "E"

Plaintiff's List of Witnesses

1. J.E. Beach
2. K.D. Sconiers
3. C.C. Wiggins
4. W.A. Clark
5. E.D. Sapp
6. S.R. Bevis
7. Vince Selley
8. W.A. Hagerty
9. K.W. Wise
10. C.P. Anthony
11. C.W. Johnson
12. Ken Wise
13. Allen Chamberlin
14. Ray Stokes
15. Roy Scherer
16. The Plaintiff
17. The Plaintiff's wife
18. All witnesses listed by the Defendants
19. Rebuttal witnesses as needed.

3. Messers Sapp and Bevis were, during the summer and fall of 1977, employed as security personnel on the Universal Studio's set in Santa Rosa County, in addition to their regular employment with the Department of Highway Safety and Motor Vehicles.

4. At that time, they and Mr. Scherer were subject to Policy No. 009, Dual Employment and Compensation, of the Department of Highway Safety and Motor Vehicles.

5. They and Mr. Scherer requested authorization to work on a secondary job.

6. They and Mr. Scherer received initial approval of that secondary employment.

7. Unlike Mr. Scherer, the initial approval of that second employment which they received was never revoked.

8. They did not wear their Highway Patrol uniforms at their secondary employment.

/s/
Ben R. Patterson

PATTERSON & TRAYNHAM
P.O. Box 4289
1215 Thomasville Road
Tallahassee, Florida 32303
(904) 224-9181

Attorney for Plaintiff

/s/
Pamela L. Lutton
Assistant Attorney General
Department of Legal affairs
Suite 1501, The Capitol
Tallahassee, Florida 32303
(904) 488-1573

Attorney for Defendants

SUPREME COURT OF THE UNITED STATES

No. 83-490

Ralph Davis, etc., et al.,

Appellants,

v.

Gregory Scott Scherer

APPEAL from the United States Court of Appeals for the Eleventh Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

December 12, 1983